G.E. GARCIA LAW OFFICE
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Republic of the Philippines
Presidential Electoral Tribunal
Manila

OFFICE OF THE CLERK OF THE TRIBUNAL

FERDINAND "BONGBONG" R. MARCOS, JR.,
Protestant,

-versus - **P.E.T. Case No. 005**

MARIA LEONOR "LENI DAANG MATUWID" G. ROBREDO,
Protestee.
x----------x

NOTICE OF RESOLUTION

Sirs/Mesdames:

Please take notice that on August 28, 2018, a Resolution, copy attached herewith, was rendered by the Presidential Electoral Tribunal in the above-entitled case, the original of which was received by this Office on August 31, 2018 at 8:35 a.m.

Very truly yours,

EDGAR O. ARICHETA
Clerk of the Tribunal

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Commissioner Robert S. Lim (x)
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Republic of the Philippines
Presidential Electoral Tribunal
Manila

FERDINAND "BONGBONG" R. MARCOS, JR.,
Protestant,

- versus -

MARIA LEONOR "LENI DAANG MATUWID" G. ROBREDO,
Protestee.

PET Case No. 005

Present:

LEONARDO-DE CASTRO, *C.J.*,
CARPIO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
TIJAM,
A. REYES, JR.,
GESMUNDO, and
J. REYES, JR., *JJ.*

Promulgated:
August 28, 2018

x - - -

for protestee in the May 2016 National and Local Elections (NLE) and remains to be one of her supporters;[4] and (v) that Justice Caguioa's spouse made statements in a private chat group purportedly against protestant.[5] The foregoing circumstances, protestant claims, display "evident bias, manifest partiality and blatant prejudice" in favor of President Aquino and protestee.[6] Thus, based on the foregoing, protestant prays that Justice Caguioa be inhibited from further participating in the proceedings and deliberations of the instant Protest, claiming that his continued participation would amount to a violation of protestant's right to due process of law.[7] He claims in particular that Justice Caguioa has fraternal relations with President Aquino who, in turn, "hand-picked" protestee as Vice-Presidential candidate of the Liberal Party in the May 2016 NLE. Protestant further argues that the purported ties of the spouse of Justice Caguioa with the Aquino family and her show of support for protestee should warrant inhibition following a sense of propriety or *delicadeza*.

In support of these allegations, protestant attached to the Motion to Inhibit a column entitled "Questions that need answers" by Len Montaño published on August 4, 2018 on the website www.radyo.inquirer.net, on the alleged conjugal conspiracy video supposedly circulating in social media, and a copy of the said video posted by Mr. Tonyboy Tabora in social media website Facebook which purportedly garnered 8,800 shares and 312,000 views.

Upon judicious scrutiny of the Motion to Inhibit and after weighing the allegations against the prevailing circumstances of the instant Protest, the Tribunal denies the same for utter lack of merit.

Case law, most recently in *Republic v. Sereno*,[8] "x x x recognizes the right of litigants to seek disqualification of judges. Indeed, elementary due process requires a hearing before an impartial and disinterested tribunal."[9] In fact, the Court continued therein that a "'judge has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to its fairness and as to his integrity.'"[10]

A litigant's right to seek inhibition, however, must be balanced with the judge's sacred duty to decide cases without fear of repression. Thus, a movant seeking the inhibition of a magistrate is duty-bound to present clear and convincing evidence of bias to justify such request. In *Republic v. Sereno,*[11] the Court ruled:

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4 Pars. 21, 24 and 26, id. at 8-9.
5 Par. 25, id. at 9.
6 Par. 29, id. at 10.
7 Pars. 32-34, id. at 11.
8 G.R. No. 237428, May 11, 2018 [Per J. Tijam, En Banc] <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/may2018/237428.pdf.>
9 Id. at 37.
10 Id., citing *Query of Exec. Judge Estrada, RTC, Malolos, Bulacan*, 239 Phil. 1, 6 (1987).
11 Supra note 8.

> However, the right of a party to seek the inhibition or disqualification of a judge who does not appear to be wholly free, disinterested, impartial and independent in handling the case must be balanced with the latter's sacred duty to decide cases without fear of repression. **The movant must therefore prove the ground of bias and prejudice by clear and convincing evidence to disqualify a judge from participating in a particular trial.** "[W]hile it is settled principle that opinions formed in the course of judicial proceedings, based on the evidence presented and conduct observed by the judge, do not prove personal bias or prejudice on the part of the judge."[12] (Emphasis supplied)

Here, the grounds cited by protestant do not form bases for the inhibition of a Member-in-Charge, since none of the grounds raised falls under the first paragraph of Section 1, Rule 8 of the Internal Rules of the Supreme Court (IRSC), likewise being used by the Tribunal:

> SECTION 1. *Grounds for inhibition.* – A Member of the Court shall inhibit himself or herself from participating in the resolution of the case for any of these and similar reasons:
>
> (a) the Member of the Court was the *ponente* of the decision or participated in the proceedings in the appellate or trial court;
>
> (b) the Member of the Court was counsel, partner or member of a law firm that is or was the counsel in the case subject to Section 3(c) of this rule;
>
> (c) the Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;
>
> (d) the Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity;
>
> (e) the Member of the Court was executor, administrator, guardian or trustee in the case; and
>
> (f) the Member of the Court was an official or is the spouse of an official or former official of a government agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.
>
> A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above.
>
> The inhibiting Member must state the precise reason for the inhibition.[13]

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[12] Id. at 37-38, citing *People v. Hon. Ong*, 523 Phil. 347, 358 (2006).

[13] INTERNAL RULES OF THE SUPREME COURT, Rule 8, Sec. 1.

For voluntary inhibitions of a Member of the Tribunal, the following criteria set by the Court in *Philippine Commercial International Bank v. Spouses Dy,*[14] is followed:

> However, the second paragraph of Rule 137, Section 1 does not give judges unfettered discretion to decide whether to desist from hearing a case. The inhibition must be for just and valid causes, and in this regard, we have noted that **the mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. This Court has to be shown acts or conduct clearly indicative of arbitrariness or prejudice before it can brand them with the stigma of bias or partiality.** Moreover, **extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself.** The only exception to the rule is when the error is so gross and patent as to produce an ineluctable inference of bad faith or malice.[15] (Emphasis supplied; citations omitted)

Based on the standard laid down in *Philippine Commercial International Bank*, the Motion for Inhibition must therefore be denied outright.

Protestant's empty allegations regarding Justice Caguioa's fraternal relations with President Aquino are only just that — empty. Without more, his imputations cannot form basis for voluntary inhibition under the IRSC. Even conceding that President Aquino appointed Justice Caguioa as a Member of the Supreme Court, and that President Aquino belonged to the same political party as protestee, this alone does not automatically mean that Justice Caguioa is biased in favor of protestee and against protestant. Parenthetically, it may be worthy to note that Justice Caguioa and protestant's spouse, Atty. Liza Araneta-Marcos, were classmates in Ateneo Law School. Hence, protestant's insistence on equating bias on the mere fact that Justice Caguioa and President Aquino were classmates holds no water.

Protestant's narration may be good reading as a conspiracy theory and may even be fodder for discourse in social media, but his theories, when used as a ground to request for an inhibition of a Member of this Tribunal, must transcend fiction. Protestant must, following *Philippine Commercial International Bank*, provide extrinsic evidence of such bias and partiality, which he miserably failed to do.

Quite the contrary, Justice Caguioa, as Member-in-Charge, has shown impartiality in his conduct of the matters involved in the Protest. Amid baseless allegations of delay, the Tribunal has given these no serious consideration as it knows that the proceedings in the Protest have, in fact, been pushed forward with utmost dispatch despite numerous pending incidents arising from it.

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[14] 606 Phil. 615 (2009).
[15] Id. at 638-639.

If only to provide context, the preliminary conference for the instant Protest was held in July of 2017, immediately after all the legal questions on the sufficiency of the allegations in the Protest, and the timeliness of the Counter-Protest, and the Answer to the Counter-Protest had been subjected to a series of submissions of pleadings by the contending parties, and finally resolved.

That the actual revision proceedings commenced only in April 2018 — *and this fact was made known to both parties during the preliminary conference*[16] — was because the Tribunal had to renovate the Supreme Court – Court of Appeals (SC-CA) gym to equip it as a proper revision and storage area. The period was also used to hire and train the Tribunal's personnel. As well, during this period of awaiting the gym's renovations, the Tribunal was called upon to also resolve a significant number of legal issues that had been raised by the parties (*i.e.,* protestee's Motion for Reconsideration *Pro Tanto*,[17] dismissal of protestant's first cause action,[18] compliance on the list of witnesses of the parties,[19] protestant's Motion for Technical Examination of election paraphernalia,[20] and protestant's Motion for Decryption and Printing of Ballot Images[21]).

Weighed against protestant's imagined misgivings, the foregoing shows that Justice Caguioa's conduct of the matters involved in this Protest has been nothing but impartial.

Further, it bears reiterating that all decisions of the Tribunal have been arrived at through a majority vote of all the members of the Court sitting *en banc*. As provided under Rule 66 of the 2010 PET Rules:

> **RULE 66.** *Votes required.* – In resolving all matters or questions submitted to the Tribunal, including the rendition of a decision and the adoption of resolutions, the concurrence of a majority of the Members present constituting a quorum, who actually took part in the deliberations on the issue of the case and voted therein, shall be necessary.

On the decision-making process, which ranges from the mundane task of procuring supplies to substantial legal issues such as the determination of the sufficiency of the allegations in the Protest, Rule 13 of the IRSC further provides:

> SEC. 3. *Actions and decisions, how reached.* – The actions and decisions of the Court whether *en banc* or through a Division, shall be arrived at as follows:

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16 See Transcript of Stenographic Notes of the Preliminary Conference held on July 11, 2017, pp. 47-48.
17 *Rollo* (Vol. XXXII), pp. 24504-24506.
18 Id. at 24482-24484.
19 Id. at 24501-24504; 24905.
20 Id. at 24508-24512.
21 Id.

(a) *Initial action on the petition or complaint.* – After a petition or complaint has been placed on the agenda for the first time, **the Member-in-Charge shall, except in urgent cases, submit to the other Members at least three days before the initial deliberation in such case, a summary of facts, the issue or issues involved, and the arguments that the petitioner presents in support of his or her case. The Court shall, in consultation with its Members, decide on what action it will take.**

(b) *Action on incidents.* – **The Member-in-Charge shall recommend to the Court** the action to be taken on **any incident** during the pendency of the case.

x x x x

SEC. 5. *Decision-making process.* – a) A Member who disagrees with the report and the recommended action of the Member-in-Charge may submit to the Chief Justice or Division Chairperson, furnishing a copy to other Members, his or her reflections, setting forth the reason or reasons for such disagreement.

b) A Member who agrees with the recommended action but based on different reason or reasons may, observing the same procedure, submit his or her reflections stating such reason or reasons.

x x x x

d) After the submission of the reflections, **the Member-in-Charge may request for a vote on the report and the reflections or for time to respond to such reflections within a maximum period of two weeks. Voting shall take place when the final versions of the report and the reflections shall have been submitted.**

e) The Court shall then assign to **a Member** the writing of its opinion based on the result of the voting. **The Member assigned shall submit the majority opinion and the other Members may submit his or her dissenting, separate, or concurring opinions based solely on the final versions voted upon.** (Emphasis supplied)

Thus, **in all actions** of the Tribunal on incidents arising from the Protest, the participation of the Member-in-Charge is simply **recommendatory in nature** and **is always subject to a majority vote of all Members who has taken part in the deliberations of the issues taken up**. Moreover, the Member-in-Charge is tasked with providing a report containing a summary of facts and issues to assist every Member in arriving at an independent assessment and decision on a pending matter or incident. In this regard, it should be noted that, to date, other than the issue on the computation of the parties' respective cash deposits, all actions taken in the Protest have been arrived at by a unanimous vote of all the Members of the Tribunal sitting *en banc*. Unless protestant can prove with tangible evidence how a single Member was able to maneuver the will of 14 other Members into blindly following him with regard to all matters referred to the Tribunal, it is best that he maintain his arguments within the realm of reality. **More importantly, to insinuate that the other Members could be bypassed in the decision-making process is to say that they are incapable of taking**

care of their own affairs and remiss in participating in the deliberations of the Protest. This version of intrigue borders on contumacious behavior and should no longer be allowed to cloud the integrity of the Members of the Tribunal and of the on-going revision process.

As regards the purported political leanings of Justice Caguioa's spouse, the Tribunal finds instructive the Resolution dated May 11, 2018 of Justice Francis H. Jardeleza (Justice Jardeleza) in *Republic v. Sereno*,[22] where he referred to a motion for inhibition of U.S. Supreme Court Justice Clarence Thomas in the cases involving the Patient Protection and Affordable Care Act of 2010. In that case, Justice Thomas's inhibition was sought because his spouse had actively engaged with a conservative policy group that challenged the constitutionality of the said statute. Without any explanation, Justice Thomas did not recuse but, as Justice Jardeleza explained, Chief Justice Roberts was led to write the following in his 2011 Year-End Report:

> Congress has directed that federal judicial officers must disqualify themselves from hearing cases in specified circumstances. As in the case of financial reporting and gift requirements, the limits of Congress's power to require recusal have never been tested. **The Justices follow the same general principles respecting recusal as other federal judges, but the application of those principles can differ due to the unique circumstances of the Supreme Court.** The governing statute, which is set out in Title 28, Section 455, of the United States Code, states, as a general principle, that a judge shall recuse in any case in which the judge's impartiality might reasonably be questioned. That objective standard focuses the recusal inquiry on the perspective of a reasonable person who is knowledgeable about the legal process and familiar with the relevant facts. Section 455 also identifies a number of more specific circumstances when a judge must recuse. All of the federal courts follow essentially the same process in resolving recusal questions. In the lower courts, individual judges decide for themselves whether recusal is warranted, sometimes in response to a formal written motion from a party, and sometimes at the judge's own initiative. In applying the Section 455 standard, the judge may consult precedent, consider treatises and scholarly publications, and seek advice from other sources, including judicial colleagues and the Judicial Conference's Committee on Codes of Conduct. A trial judge's decision not to recuse is reviewable by a court of appeals, and a court of appeals judge's decision not to recuse is reviewable by the Supreme Court. **A court normally does not sit in judgment of one of its own members' recusal decision in the course of deciding a case. The process within the Supreme Court is similar. Like lower court judges, the individual Justices decide for themselves whether recusal is warranted under Section 455. They may consider recusal in response to a request from a party in a pending case, or on their own initiative. They may also examine precedent and scholarly publications, seek advice from the Court's Legal Office, consult colleagues, and even seek counsel from the Committee on Codes of Conduct. There is only one major difference in the recusal process: There is no higher court to review a**

[22] J. Jardeleza, Resolution, G.R. No. 237428, May 11, 2018 <http://sc.judiciary.gov.ph/jurisprudence/2018/may2018/237428_jardeleza.pdf>.

> **Justice's decision not to recuse in a particular case. This is a consequence of the Constitution's command that there be only "one supreme Court."** The Justices serve on the Nation's court of last resort. As in the case of the lower courts, the Supreme Court does not sit in judgment of one of its own Members' decision whether to recuse in the course of deciding a case. Indeed, if the Supreme Court reviewed those decisions, it would create an undesirable situation in which the Court could affect the outcome of a case by selecting who among its Members may participate. Although a Justice's process for considering recusal is similar to that of the lower court judges, the Justice must consider an important factor that is not present in the lower courts. **Lower court judges can freely substitute for one another. If an appeals court or district court judge withdraws from a case, there is another federal judge who can serve in that recused judge's place. But the Supreme Court consists of nine Members who always sit together, and if a Justice withdraws from a case, the Court must sit without its full membership. A Justice accordingly cannot withdraw from a case as a matter of convenience or simply to avoid controversy. Rather, each Justice has an obligation to the Court to be sure of the need to recuse before deciding to withdraw from a case.**[23] (Additional emphasis and underscoring supplied)

Applied to this case, that the spouse of the Member-in-Charge has political beliefs is not, by any means, evidence to show the existence of bias or impartiality on the part of the Member-in-Charge. Aside from the fact that they are two separate individuals with separate identities, it is simply reckless to assume that a husband would have the same exact political sentiments as his wife, or vice versa. Such arguments are plainly conjectural and cannot stand scrutiny in a court of law. Justices are not to inhibit as a matter of convenience or simply to avoid controversy.[24] Given the significance of the present Protest, the participation of all Members of the Tribunal is very important and voluntary inhibitions must be with clear and convincing basis — one that is utterly lacking here.

The Tribunal likewise finds it disturbing that protestant would even go as far as to insinuate the intervention of Justice Caguioa in the raffling of the instant Protest:

> 14. Barely 4 months after Noynoy Aquino appointed him as the 174th Justice of the Supreme Court, Associate Justice Caguiao (*sic*) became the *ponente* of Marcos' election protest before the Supreme Court, acting as the Presidential Electoral Tribunal (PET).
>
> x x x x
>
> 18. On June 29, 2016 – barely four (4) months after Noynoy Aquino appointed Associate Justice Caguiao (*sic*), the election protest filed by protestant Marcos curiously landed on the latter's lap.[25] (Emphasis omitted)

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[23] Id. at 30-31.
[24] Id. at 31.
[25] Motion to Inhibit, pp. 7-8.

Under the IRSC, a Member of the Tribunal, prior to becoming the Member-in-Charge, has no participation in the assignment of cases. Moreover, the current raffling system through the use of a random raffle device bars any exertion of influence by any Member of the Tribunal, to wit:

> SEC. 2. *Raffle Committee.* – Two Raffle Committees – one for the *en banc* and the other for Division cases, each to be composed of a Chairperson and two members – shall be designated by the Chief Justice from among the Members of the Court on the basis of seniority.
>
> x x x x
>
> SEC. 8. *Conduct of the raffle.* – The cases included in a previously prepared list shall be raffled using a reasonably acceptable random raffle device under a system that shall ensure the fair and equitable distribution of case load among all Members of the Court.[26]

Clearly, protestant's allegation that the Protest "curiously landed" on the lap of Justice Caguioa unduly creates an impression of bias or impropriety even on the part of the members of the Court's raffle committee. This too borders on the contumacious.

The Tribunal also observes that only protestant signed the Motion to Inhibit and was merely "assisted" by counsel. Section 3, Rule 7 of the Revised Rules of Court provides that every pleading must be signed by the party **or** counsel representing him. This provision was taken from Section 5,[27] Rule 7 of the old Rules of Court, which was interpreted to mean that when a party is represented by counsel, any pleading or motion must be signed by the counsel. It is only when a party is not represented by counsel that the party himself may sign.[28] The conjunctive "or" in the new rule, clearly indicates the intent to maintain the requirement in the old rule. Thus, when a party is represented by counsel of record, service of orders and notices must be made upon said attorney; and notice to the client and to any other lawyer who is not the counsel of record, is not notice in law.[29]

Furthermore, in support of his Motion to Inhibit, protestant appended a column entitled "Questions that need answers" by Len Montaño published on August 4, 2018 on the website www.radyo.inquirer.net, on the alleged

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[26] INTERNAL RULES OF THE SUPREME COURT, Rule 7, Secs. 2 and 8.

[27] SEC. 5. *Signature and Address.* — Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken out as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted. (*Rules of Court, January 1, 1964.*)

[28] I Moran, COMMENTS ON THE RULES OF COURT (1979), pp. 305-306.

[29] *Cervantes v. City Service Corporation*, 784 Phil. 694, 699 (2016).

conjugal conspiracy video supposedly circulating in social media, and a copy of the said video. An opinion piece in a news website and an unauthenticated video circulating on social media websites are not credible and admissible supporting evidence; these are not even worthy of cognizance by the Court.

All these deficiencies in the Motion to Inhibit, coupled with the utter lack of legal and factual bases therefor, relegate the document to a mere scrap of paper.

Finally, it bears noting that the Tribunal has, in a previous occasion, affirmed Justice Caguioa's impartiality as Member-in-Charge of the Protest. In the session of the Tribunal held on July 24, 2018, the Tribunal *unanimously* denied Justice Caguioa's request to have the Protest re-raffled. This arose from Justice Caguioa's concern that despite all efforts of the Tribunal to move the proceedings forward with utter dispatch and insulated from external influences, the parties and even the media have still managed to tarnish the process based solely on the fact that Justice Caguioa is the Member-in-Charge. Knowing that there is no basis for his inhibition, but only to obviate further unfounded criticism from the public, Justice Caguioa requested a re-raffle of the case.

In this regard, the Tribunal denied such request because there is no reason to indulge the controversy created by some opinion writers and the protestant himself in the face of the remarkable progress achieved in the Protest under the guidance of Justice Caguioa. Borrowing the words of Chief Justice Roberts, as cited by Justice Jardeleza in his Resolution[30] dated May 11, 2018, a Justice cannot withdraw from a case as a matter of convenience or as a means to avoid controversy.

IN VIEW OF THE FOREGOING, the Tribunal resolves to **DENY** protestant's Extremely Urgent Motion to Inhibit Associate Justice Alfredo Benjamin S. Caguioa dated August 4, 2018. Further, protestant and his counsels of record are **STERNLY WARNED** that any unfounded and inappropriate accusation made in the future will be dealt with more severely.

SO ORDERED.

Teresita Leonardo De Castro

TERESITA J. LEONARDO-DE CASTRO
Chief Justice
Chairperson

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[30] Supra note 22, at 31.

ANTONIO T. CARPIO
Associate Justice
Member

DIOSDADO M. PERALTA
Associate Justice
Member

LUCAS P. BERSAMIN
Associate Justice
Member

MARIANO C. DEL CASTILLO
Associate Justice
Member

ESTELA M. PERLAS-BERNABE
Associate Justice
Member

MARVIC M.V.F. LEONEN
Associate Justice
Member

FRANCIS H. JARDELEZA
Associate Justice
Member

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Member

NOEL GIMENEZ TIJAM
Associate Justice
Member

ANDRES B. REYES, JR.
Associate Justice
Member

ALEXANDER G. GESMUNDO
Associate Justice
Member

JOSE C. REYES, JR.
Associate Justice
Member

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Chief Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court